

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

William Branch	:	
Plaintiff	:	
	:	No. 1:CV 00-1728
v.	:	
	:	
CO Russian, et al.	:	(Judge Conner)
Defendants	:	(Electronically Filed)
	:	

**DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S
MOTION FOR LEAVE TO FILE A SUPPLEMENTAL PLEADING**

For the second time, William Branch has asked the Court to grant him leave to file a supplemental pleading in this case. Though denominated a "Motion to the Court for the Allow[sic] of Supplemental Pleading", the document is in essence an untimely motion for reconsideration which should be denied.

On December 10, 2003, Branch filed his first "Motion to Allow A supplemental Pleadings[sic]". This motion was not supported by a brief as required by the local rules. *See* M.D.L.R. 7.5 By order dated January 7, 2004, the Court denied Branch's motion on the ground that allowing him to file a supplemental pleading at this juncture of the case would unduly prejudice the defendants.

In the brief supporting his second motion for leave to file a supplemental pleading, Branch refers to the Court's order denying his previous request and

attempts to offer argument to persuade the Court to revisit and amend its December 10, 2003 decision. *See* Plaintiff's Brief in Support to Allow Supplemental Pleading at p.1 In effect, Branch is asking the Court to reconsider that decision. However, Middle District Local Rule 7.10 provides that "[a]ny motion for reconsideration or reargument shall be filed within ten (10) days after the entry of the judgment, order or decree concerned." M.D.L.R. 7.10 Having filed his motion to reconsider the December 10, 2003 order beyond the time allowed by Local Rule 7.10, it is untimely.

But even if the Branch's motion were not untimely, it has no merit whether called a Rule 15(d) motion to amend or a motion for reconsideration. The reasons are that Branch has included no facts in his motion or brief which explain why an amendment of his complaint is appropriate at this time or why the Court's earlier decision denying him leave to supplement his pleadings is wrong. The Court should deny Branch's motion.

Respectfully submitted,

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Dated: February 11, 2004

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CERTIFICATE OF SERVICE

I, **GWENDOLYN T. MOSLEY**, Senior Deputy Attorney General
for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify
that on **February 11, 2004**, I caused to be served a true and correct copy of the
foregoing document **Defendants' Brief in Opposition to Plaintiff's Motion for
Leave to File a Supplemental Pleading** by depositing it in the United States
mail, first-class postage prepaid to the following:

William Branch, CF-3756
SCI-Waymart
P.O. Box 256
Waymart, PA 18472

s/Gwendolyn T. Mosley
GWENDOLYN T. MOSLEY
Senior Deputy Attorney General